

**THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
ROCKINGHAM DIVISION**

No. 1: 09-cv-632

DALE REECE

Plaintiff,

vs.

BROCK & SCOTT, PLLC;

JOEL J. HUMPHRIES;

and WALLAGO INVESTMENTS, LLC,

Defendants.

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AMENDED COMPLAINT

JURY TRIAL DEMANDED

INTRODUCTION

This Amended Complaint is filed pursuant to Fed. R. Civ. P. 15(a). To date, Defendants have not filed a responsive pleading under Fed. R. Civ. Pro. 7.

This is an action for damages brought by Plaintiff Dale Reece to seek redress for Defendants' violations of the Fair Debt Collections Practices Act (hereinafter "FDCPA"), 15 U.S.C. §§ 1692, *et seq.* which prohibits debt collectors from engaging in abusive, deceptive and unfair practices by these Defendants and their agents in their illegal efforts to collect a consumer debt from Plaintiff. The FDCPA broadly prohibits unfair or unconscionable collection methods; conduct which harasses, oppresses or abuses any consumer; and false, deceptive, or misleading statements, in connection with the collection of a debt; it also requires debt collectors to give consumers certain information. 15 U.S.C. §§ 1692d, 1692e, 1692f and 1692g. When it enacted the FDCPA, Congress found there to be abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Two of Congress' stated purposes in enacting the FDCPA were to eliminate abusive and deceptive debt collection practices by debt collectors and to insure that those debt collectors who refrain from using abusive debt collection

practices are not competitively disadvantaged. *U.S. v. National Financial Services, Inc.*, 98 F.3d 131, 135 (4th Cir. 1996). A debt collector's filing of a lawsuit on a time-barred debt is an unfair and unconscionable means of collecting the debt. *Kimber v. Federal Financial Corp.*, 668 F.Supp. 1480, 1487 (M.D. Ala. 1987).

The Plaintiff, Dale Reece, by and through his undersigned attorney, sues the Defendants, Brock & Scott, PLLC (hereinafter "Defendant BS"), Joel J. Humphries (hereinafter "Defendant Humphries"), and Wallago Investments, LLC (hereinafter "Defendant Wallago") and alleges and says as follows:

JURISDICTION AND VENUE

1. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and pursuant to 15 U.S.C. § 1692k(d).
2. This action arises out of Defendants' violations of the FDCPA in their illegal efforts to collect a consumer debt from Plaintiff.
3. Venue is proper in this District because the acts and transactions occurred here, Plaintiff resides here, and Defendants transact business here.
4. This case is brought within one year of the violations in compliance with the statute of limitations at 15 U.S.C. § 1692k(d).

PARTIES

5. Plaintiff Dale Reece, is a natural person residing in the City of Sanford, County of Lee, State of North Carolina, and is a "consumer" and/or a person affected by a violation of the FDCPA as those terms are defined by 15 U.S.C. §§ 1692a(3) and 1692k.

6. Defendant Brock & Scott, PLLC (hereinafter “Defendant BS”) is, upon information and belief, a professional corporation and a debt collection law firm operating from an address of 1315 Westbrook Plaza, Winston-Salem, NC 27103.
7. Defendant BS is engaged in the collection of debts from North Carolina consumers using the mail, telephone, and/or North Carolina state court system.
8. Defendant BS regularly attempts to collect consumer debts alleged to be due to another.
9. Defendant BS was and is a “debt collector” as defined by the FDCPA, 15 U.S.C. §1692a(6).
10. Defendant Humphries is an attorney licensed by the State of North Carolina.
11. Defendant Humphries is, upon information and belief, an associate at Defendant BS.
12. Defendant Humphries is engaged in the collection of debts from North Carolina consumers using the mail, telephone, and/or North Carolina state court system.
13. Defendant Humphries regularly attempts to collect consumer debts alleged to be due to another.
14. Defendant Humphries was and is a “debt collector” as defined by the FDCPA, 15 U.S.C. §1692a(6).
15. Defendant Wallago Investments, LLC (hereinafter “Defendant Wallago”) is, upon information and belief, a debt collection business operating from an address of 1315 Westbrook Plaza, Winston-Salem, NC 27103.
16. The sole managers of Wallago Investments, LLC are Thomas E. Brock and Gregory A. Scott. Defendant Wallago is engaged in the collection of debts from North Carolina consumers using the mail, telephone, and/or North Carolina state court system.

17. Defendant Wallago is engaged in the business of purchasing or otherwise acquiring allegedly defaulted debts originally owed to others and incurred for personal, family, or household purposes.
18. Defendant Wallago pays an average of less than ten cents on the dollar for the debts it purchases or acquires.
19. Defendant Wallago then attempts to collect the purchased debts.
20. Defendant Wallago was and is a “debt collector” as defined by the FDCPA, 15 U.S.C. §1692a(6).
21. All actions taken by Defendants BS and Humphries complained of herein were taken as authorized agents of Defendant Wallago.

FACTUAL ALLEGATIONS

22. Plaintiff is a consumer or other person as that term is defined in 15 U.S.C. § 1692a(3).
23. Plaintiff incurred an alleged debt to Bank of America (the “Account”).
24. The Account was incurred for personal, family, or household purchases.
25. The Account entered default.
26. Plaintiff has not made a payment or charge to the Account since July 2004.
27. Defendant Wallago allegedly purchased or otherwise obtained the Account after it entered default.
28. Defendant Wallago retained BS to assist them in the recovery of the defaulted Account.
29. The Account is a “debt” as that term is defined by 15 U.S.C. § 1692a(5).

Debt Collection Lawsuit in State Court

30. Defendant Humphries, as employee of Defendant BS and on behalf of Defendant Wallago, filed a debt collection lawsuit against Plaintiff in Lee County District court on June 25, 2009.
31. On the face of the collection lawsuit complaint, Defendant Humphries declares that the Account has been in default since "July 3, 2004". (Exhibit 1, attached, See Para. 3, 4, and 6 and in the Prayer for Relief).
32. No payments have been credited to the Account since July 3, 2004.
33. Plaintiff has suffered actual damages as a result of the illegal collection activities by these Defendants in the form of anger, anxiety, emotional distress, fear, frustration, humiliation, embarrassment, amongst other negative emotions, and incurred additional actual damages in the form of legal fees to defend the time-barred state court action.

TRIAL BY JURY

34. Plaintiff is entitled to and hereby respectfully demands a trial by jury on all issues so triable. US Const. amend. 7. Fed.R.Civ.P. 38.

CAUSES OF ACTION

COUNT ONE

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. §§ 1692 *et seq.*

35. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
36. The foregoing acts and omissions of the Defendants constitute numerous and multiple violations of the FDCPA including, but not limited to, 15 U.S.C. §§ 1692e, 1692e(2) and 1692e(10), 1692f, and 1692f(1) amongst others.

37. As a result of Defendants' violations of the FDCPA, Plaintiff is entitled to actual damages pursuant to 15 U.S.C. § 1692k(a)(1) from each and every Defendant; statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A) from each and every Defendant; and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from the Defendants herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered:

1. for an award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against each and every Defendant jointly and severally;
2. for an award of statutory damages of \$1,000.00 from each and every Defendant jointly and severally pursuant to 15 U.S.C. § 1692k(a)(2)(A);
3. for an award of costs of litigation and reasonable attorney's fees from each and every Defendant jointly and severally pursuant to 15 U.S.C. § 1692k(a)(3);
4. for an award of the costs of suit, any discretionary costs as may be allowable by law, pre-judgment and post-judgment interest from each and every Defendant jointly and severally; and
5. for further relief as the Court deems just and proper under the circumstances.

Respectfully submitted this 30th day of September, 2009.

MARTIN ATTORNEY AT LAW, PLLC

By: /s/ Angela O. Martin
Angela O. Martin, Esq.
NC Bar 34951
Attorney for Plaintiff
Martin Attorney at Law, PLLC
1911 Keller Andrews Road
Sanford, North Carolina 27330
(919) 708-7477, FAX: (888) 872-4232
angela@angelamartinlaw.com

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CERTIFICATE OF SERVICE

I certify that on September 30, 2009, I electronically filed the Foregoing Amended Complaint with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

Richard Jackson
Brock & Scott, PLLC
1315 Westbrook Plaza
Winston-Salem, NC 27103
Richard.jackson@brockandscott.com

Respectfully submitted this 30th day of September, 2009,

MARTIN ATTORNEY AT LAW, PLLC

By: /s/Angela O. Martin

Angela O. Martin, Esq.

NC Bar 34951

Attorney for Plaintiff

Martin Attorney at Law, PLLC

1911 Keller Andrews Road

Sanford, North Carolina 27330

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angela@angelamartinlaw.com

LEE COUNTY

REDACTED

WALLAGO INVESTMENTS, Plaintiff, 2009 JUN 25 AM 9: 28
vs.)
DALE A REECE,) U.S.C.
Defendant. BY)

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COMPLAINT

PLAINTIFF'S
EXHIBIT 1

STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

AFFIDAVIT OF DEFAULTED ACCOUNT

I, the undersigned, swear and depose that I am the appropriate custodian of records and having knowledge of the information set forth certifies as to the following:

1. BOA Post Agency One-Off issued credit account [REDACTED] to Defendant.
2. Plaintiff is current holder of this account through assignment in due course from BOA Post Agency One-Off.
3. Defendant, DALE A REECE in this action has same account [REDACTED] with the Plaintiff which is currently in default.
4. The outstanding principal balance as of the filing of this action is [REDACTED]
5. Interest is accruing at a rate of [REDACTED] per annum from the date interest began July 3, 2004, through the filing of this action until judgment, pursuant to cardholder agreement.
6. The attached pages of documents are a true copy of the business records of the Plaintiff maintained by me and in my custody. The business records attached hereto are made at or near the time of the occurrences or transactions recorded therein, by persons having actual knowledge of the said occurrences or transactions, or in the alternative are made from information transmitted by persons having actual knowledge thereof. The business records are kept in the course of the Plaintiff's regularly conducted business activity, and it is the regular practice of the Plaintiff to keep such records.

This the 9 day of JUNE, 2009.

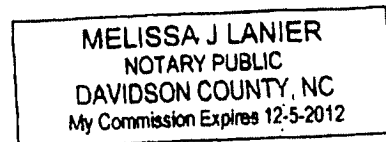
Darren Woods

Darren Woods

WALLAGO INVESTMENTS
COMPANY

Account Manager and Records Custodian
TITLE

Sworn to and subscribed before me this
9 day of June, 2009.
Melissa J. Lanier
Notary Public



My Commission Expires: 12-5-2012

Plaintiff's Exhibit

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Respectfully submitted this 30th day of September, 2009,

MARTIN ATTORNEY AT LAW, PLLC

By: /s/Angela O. Martin

Angela O. Martin, Esq.

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Attorney for Plaintiff

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